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CRGO LAW
STEVEN M. GREENBERG
7900 Glades Road
SUITE 520
BOCA RATON, FL 33434

EXAMINER

CROMPTON, CHRISTOPHER R

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LINWOOD H. OVERBY JR. and MARK T. WRIGHT

Appeal 2016-000789
Application 11/354,360
Technology Center 2400

Before JOSEPH L. DIXON, JAMES R. HUGHES, and
ERIC S. FRAHM, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ appeal under 35 U.S.C. § 134(a) from a rejection of claims 1, 2, 4–7, and 9–26. This appeal is related to a prior decision 2011–010153, mailed May 30, 2014, in this same application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants indicated that the real party in interest is International Business Machines Corporation. (App. Br. 2).

The claims are directed to a predictive generation of a security network protocol configuration. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A security services implementation protocol configuration data processing computer hardware system comprising:

a platform specific configuration builder executing in a memory of a computer, the platform specific configuration builder comprising program code enabled to produce a platform specific configuration of a security services protocol implementation including a programmatic implementation of a network security service including one of Internet Protocol Security (IP Sec) and transport layer security (TLS);

a set of network topology descriptions, each network topology description comprising a thumbnail image representing a different network topology; and,

a configuration tool executing in the memory of the computer and coupled to the set of network topology descriptions, the configuration tool comprising program code enabled to display the set of network topology descriptions in the configuration tool, to detect a selection of one of the thumbnail images in the configuration tool, and to configure settings for the security services protocol implementation corresponding to a selected thumbnail image associated with one of the network topology descriptions.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Snay et al.	US 6,282,678 B1	Aug. 28, 2001
Brown et al.	US 2002/0188701 A1	Dec. 12, 2002
Chandrashekhar et al.	US 2003/0140131 A1	July 24, 2003
Davis et al.	US 2005/0076228 A1	Apr. 7, 2005
Grebus et al.	US 2006/0002388 A1	Jan. 5, 2006
Reilly et al.	US 6,996,510 B1	Feb. 7, 2006

Satkunanathan et al.	US 2006/0129804 A1	June 15, 2006
Moore et al.	US 2007 /0028175 A1	Feb. 1, 2007
Newstadt et al.	US 2007/0107043 A1	May 10, 2007
Jordan et al.	US 2008/0216006 A1	Sept. 4, 2008

REJECTIONS

The Examiner made the following rejections:

Claims 1, 2, 7, 9, 18, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown in view of Newstadt in view of Jordan in view of Chandrashekhar in view of Moore.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown, in view of Newstadt, in view of Jordan in view of Chandrashekhar in view of Moore, further in view of Satkunanathan.

Claims 5, 11, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown, in view of Newstadt, in view of Jordan in view of Chandrashekhar in view of Moore, further in view of Snay.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown, in view of Newstadt, in view of Jordan in view of Chandrashekhar in view of Moore further in view of Reilly.

Claims 10, 17, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown in view of Newstadt in view of Jordan in view of Chandrashekhar in view of Moore in view of Reilly, further in view of Satkunanathan.

Claims 12, 16, 21, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown in view of Newstadt in view of Jordan in view of Chandrashekhar in view of Moore, further in view of Reilly.

Claims 13 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown in view of Newstadt in view of Jordan in view of Chandrashekhar in view of Moore in view of Reilly, further in view of Satkunanathan, in view of Grebus.

Claims 14 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown in view of Newstadt in view of Jordan in view of Chandrashekhar in view of Moore in view of Reilly in view of Satkunanathan in view of Grebus further in view of Davis.

Claims 15 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown in view of Newstadt in view of Jordan in view of Chandrashekhar in view of Moore in view of Reilly further in view of Snay.

ANALYSIS

With respect to independent claims 1, 9, and 18, Appellants argue the claims together. (App. Br. 5). As a result, we select independent claim 1 as the representative claim for the group and will address Appellants' arguments thereto.

With respect to representative independent claim 1, Appellants contend that the claimed invention requires:

display of a set of network topology descriptions, where each network topology description is a thumbnail image representing a different network topology³ and the identification of configuration settings⁴ corresponding to the selection of the thumbnail image associated with one of the network topology descriptions.

(App. Br. 6–7). Appellants repeat various portions of the Brown and Moore references and contend that the configuration settings of the prior art references and the display interface makes no references to displaying a graphical user interface of multiple different thumbnail images, each

representing a different network topology from which a selection is made. (App. Br. 7–10). Appellants further address the Jordan reference in combination with the Brown reference and contend that the “Examiner is over broadening what the art discloses.” (App. Br. 11–12).

Appellants contend that the Examiner fails to address the claim language “to detect a selection” and consequently fails to map the claim language to the prior art teachings. (App. Br. 12–13).

We disagree with Appellants and find the Examiner further explains the combination of the teachings of the multiple prior art references in a detailed statement of the rejection. (Final Act. 3–6). The Examiner further maintains that the combination of the Brown and Jordan references were used to teach and suggest the display and selection of a network topology which includes a detection of a selection of a topology because configuration settings for a selected topology are applied in response to the selection of the topology. (Ans. 5, 6–7). We agree with the Examiner and further agree that Appellants have not addressed the combination as proffered by the Examiner.

In the Reply Brief, Appellants repeat the language of the claim and contend that the claims pertain to a “security services protocol implementation.” (Reply Br. 3–4). Again, Appellants present portions of each of the Brown, Jordan, and Moore references (Reply Br. 4–8) and generally contend:

the combination of Brown, Jordan, and Moore fails to teach or suggest displaying multiple different thumbnail images, each representing different network topologies, such that a thumbnail image associated with one network topology description can be selected, as required by Appellants’ claim language.
(Reply Br. 8).

We disagree with Appellants and note claim terms are to be given their broadest reasonable interpretation, as understood by those of ordinary skill in the art and taking into account whatever enlightenment may be had from the Specification. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

We agree with the Examiner that Appellants are separately addressing the teachings of the Brown and Jordan references. (Ans. 5).

Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *see In re Keller*, 642 F.2d 413, 426 (CCPA 1981) (“one cannot show nonobviousness by attacking references individually where, as here, the rejections are based on combinations of references” (citations omitted)). Additionally, “the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007). Furthermore, the artisan is not compelled to blindly follow the teaching of one prior art reference over the other without the exercise of independent judgment. *See Lear Siegler, Inc. v. Aeroquip Corp.*, 733 F.2d 881, 889 (Fed. Cir. 1984).

We also find that it would have been well with the skill level of one skilled in the art to combine such known techniques in the prior art references as proffered by the Examiner. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) (“[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious

unless its actual application is beyond his or her skill” (citations omitted)). We are not persuaded that combining the respective familiar elements of the cited references in the manner proffered by the Examiner would have been “uniquely challenging or difficult for one of ordinary skill in the art” at the time of Appellants’ invention. *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing KSR, 550 U.S. at 418).

As a result, Appellants’ arguments do not show error in the Examiner’s underlying factual findings or the Examiner’s ultimate conclusion of obviousness of representative independent claim 1.

With respect to the Examiner’s arguments regarding the prior appeal and Appellants’ responses thereto, we need not reach the issue because we find the prior art combination as set forth by the Examiner to teach and fairly suggest the invention as recited in the language of independent claim 1 where the prior art teaches selecting security services protocol implementation, the well-known in use of thumbnail images, and the selection with detection of selection of a network topology descriptions. (Reply Br. 9–10; Ans. 5–7). Therefore, Appellants’ arguments do not show error in the Examiner’s underlying factual findings or the Examiner’s ultimate conclusion of obviousness of representative independent claim 1.

Claims 4–6, 10–13, 15–17, 19–21, and 23–25

Appellants restate the grounds of rejection and rely upon the arguments advanced with respect to independent claims 1, 9, and 18. (App. Br. 13 – 17). Because we found Appellants’ arguments to be unpersuasive

of error in the base combination, we group these claims as falling with their respective independent claims.

CONCLUSIONS

The Examiner did not err in rejecting claims 1, 2, 4–7, and 9–26 based upon obviousness under 35 U.S.C. § 103.

DECISION

For the above reasons, we sustain the Examiner’s obviousness rejections of claims 1, 2, 4–7, and 9–26 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED